

## REMARKS

The Amendments shown above and these Remarks are made in reply to the Office Action mailed December 1, 2009. Claims 1, 4-6, 9-10, 15, 17, 20-21, and 24-27 were examined. Applicant has amended claims 4-6, 9-10, 17, and 20-21; cancelled claims 1, 15 and 24-27; and added new claims 45-48. Reconsideration of the pending claims is respectfully requested.

### I. SUMMARY OF THE EXAMINER'S ACTIONS

In the Office Action mailed December 1, 2009, the Examiner:

- confirmed applicant's election of species;
- rejected claims 1, 4-6, 9-10, 15, 17, 20-21 and 24-27 under 35 USC § 112, first paragraph, as non-enabled;
- rejected claims 1, 4-6, 9-10, 15, 17, 20-21 and 24-27 under 35 USC § 112, second paragraph, as indefinite;
- rejected claims 1, 4, 6, 9-10, 15, 17, 20-21 and 24-27 under 35 USC § 103(a) as unpatentable over U.S. Patent Pub. No. 2004/0014484 ("Kawashima"), in view of U.S. Patent Pub. No. 2003/0109252 ("Prentice"), and either one of U.S. Patent No. 7,248,677 ("Randall") or U.S. Patent No. 7,352,997 ("Torvinen"); and
- rejected claim 5 under 35 USC § 103(a) as being unpatentable over *Kawashima*, *Prentice* and either one of *Randall* or *Torvinen* as applied to claim 4, and further in view of U.S. Patent No. 7,139,551 ("Jamadagni").

### II. SPECIFIC RESPONSE TO THE EXAMINER'S ACTIONS

#### A. The Section 112 Rejections Are Overcome

The Examiner rejected all claims as not enabled. Applicant respectfully traverses the rejection. In the Section of applicant's specification entitled "General Presentation of the Invention," the term "operating layer" is described as something that "*stores an application for reading graphical animation[s](sic) contents.*" (See ¶11). Further, the specification describes a typical operating system ("OS") of the "symbian" type having "series 60" interfaces. Also, Fig. 1

illustrates a software architecture for a mobile phone having an OS layer and an interface consistent with these descriptions. The components of the operating layer are explicitly spelled out in ¶¶ 55-58. Thus, these terms are, in fact, well known and/or well-defined in the specification. In addition, four specific variations for carrying out the invention are described in ¶¶ 60-87. For all these reasons, applicant submits that the specification is enabling for all pending claims.

The Examiner also rejected the pending claims as indefinite. However, applicant has cancelled independent claims 1, 15, 25 and 27, and replaced them with new claims 46-48, respectively, and submits that these claims as rewritten are definite within the meaning of Section 112.

#### B. The Section 103 Rejections Are Overcome

The Examiner rejected independent method claim 1 as obvious over the combination of *Kawashima, Prentice* and either *Randall* or *Torvinen*. Applicant has cancelled claim 1 and replaced it with new claim 45, as shown above, and submits that the cited combination does not teach or suggest the claimed invention. Thus, claim 45 now requires that the "*graphical layer of the mobile phone is disabled in order to display the downloaded graphical animation content.*" None of the cited references disable or bypass the graphic layer in order to display downloaded graphical animations.

The Examiner asserts that it would be obvious to bypass the graphical layers since "*Kawashima and Randall provide display data before a call is answered*" and "*the Symbian OS provides for robust applications.*" (See Office Action at p. 11) However, applicant fails to appreciate how or why these citations make this recited feature obvious. It appears to applicant that the Examiner has not established a *prima facie* case for obviousness, but instead, made an unsupported allegation. For this reason, applicant submits that claim 45 is patentable over the cited combination.

Claims 4-6 and 9-10 are dependent from claim 45 and considered patentable for the same reasons.

The Examiner likewise rejected independent apparatus claim 15 as obvious over the cited combination. Applicant has cancelled claim 15 and replaced it with new claim 46, as shown above, and submits that the cited combination does not teach or suggest the claimed invention. Thus, claim 46 now requires "*an application for disabling a graphical layer of the mobile phone and for displaying the graphical animation content upon receiving an incoming call.*" As stated previously, none of the cited references disable or bypass the graphic layer in order to display graphical animations. For this reason, applicant submits that claim 46 is likewise patentable over the cited combination.

Claims 17 and 20-21 are dependent from claim 46 and considered patentable for the same reasons.

The Examiner also rejected independent claim 25 and 27 as obvious over the cited combination. Applicant has cancelled claims 25 and 27 and replaced them with new claims 47 and 48, respectively, as shown above. Applicant submits that the cited combination does not teach or suggest these claimed inventions.

For example, claim 47 and claim 48 both require "*the background task application activating an application to read the graphical content and disabling a graphic layer of the mobile phone upon the notification of an incoming call.*" For the reasons discussed above, the cited combination does not teach or suggest such a feature, and therefore applicant submits that claims 47-48 are likewise patentable over the cited combination.

### III. CONCLUSION

Based on the amendments shown above and these remarks, reconsideration of the pending claims is respectfully requested.

The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone or email.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including today, April 1, 2010.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: April 1, 2010

By: /Richard A. Nebb/  
Richard A. Nebb  
Reg. No. 33,540

VIERRA MAGEN MARCUS & DENIRO LLP  
575 Market Street, Suite 2500  
San Francisco, California 94105  
Telephone: 415.369.9660  
Facsimile: 415.369.9665  
[rnebb@vierramagen.com](mailto:rnebb@vierramagen.com)